

Message Text

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ACTION AF-08

INFO OCT-01 ISO-00 EB-07 TRSE-00 OMB-01 SP-02 L-03 CIAE-00

INR-07 NSAE-00 OPIC-03 /032 W

-----201113Z 112611 /11

P R 200938Z JAN 77

FM AMEMBASSY LAGOS

TO SECSTATE WASHDC PRIORITY 8728

INFO USDOC WASHDC

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PASS TO OIM/SAD: SMILLER

E.O. 11652: N/A

TAGS: EINV, NI

SUBJECT: 1977 INDIGENIZATION DECREE

REF: (A) LAGOS 0541 (B) LAGOS 13175 (C) LAGOS 13720

1. SUMMARY. THE 1977 NIGERIAN ENTERPRISES PROMOTION DECREE WHICH FORMALIZES THE FMG'S NEW INDIGENIZATION POLICY AFFECTING ALL BUSINESS ACTIVITY IN NIGERIA WAS PUBLISHED ON JANUARY 13. ALTHOUGH THE DECREE IS MORE MODERATE THAN THE RIGID WHITE PAPER, IT IS NOT AS FLEXIBLE AS MANY HAD HOPED, I.E., ENTIRE CONSTRUCTION INDUSTRY IS UNDER SCHEDULE II (60 PERCENT NIGERIAN CONTROL). SALIENT POINTS OF DECREE INCLUDE A RECONSTITUTED NIGERIAN ENTERPRISES PROMOTION BOARD (NEPB); CLARIFICATION OF FUNCTION OF THE CAPITAL ISSUES COMMISSION (CIC); ATTEMPT TO SPREAD OWNERSHIP OF SHARES TO MIDDLE CLASS; AND INSTITUTION OF SIGNIFICANT PENALTIES AGAINST FRAUD, ESPECIALLY AGAINST THE USE OF NIGERIAN FRONTS TO MASK CONTINUED ALIEN CONTROL OF ENTERPRISES. END SUMMARY

2. MAIN PROVISIONS OF DECREE

A) RECONSTITUTION OF NIGERIAN ENTERPRISES PROMOTION BOARD (NEPB).

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RECOGNIZING NEPB'S LACKLUSTER PERFORMANCE IN PAST, DECREE HAS ATTEMPTED TO STRENGTHEN IT CONSIDERABLY. THE NEPB'S BOARD WILL HAVE REPRESENTATIVES FROM THE MINISTRIES OF INDUSTRIES, FINANCE, ECONOMIC DEVELOPMENT, TRADE, AND INTERNAL AFFAIRS. OTHER MEMBERS WILL BE PROVIDED BY CIC (1), NIGERIAN STOCK EXCHANGES (SO FAR ONLY 1), PLUS 5 REPRESENTATIVES FROM GENERAL PUBLIC. A NIGERIAN ENTERPRISE PROMOTION COMMITTEE WILL BE SET UP IN EACH

STATE TO ASSIST NEPB. FURTHERMORE, A CORPS OF INSPECTORS WILL BE INSTITUTED TO BEEF UP NEPB'S POLICING FUNCTION. NEPB IS NOW EMPOSED TO CLOSE DOWN AND SELL OF ENTERPRISES NOT CONFORMING TO DECREE. STIFF FINES AND PRISON TERMS HAVE BEEN INSTITUTED AGAINST FRAUD, INCLUDING PROVIDING FALSE INFORMATION AND HAVING NIGERIAN NATIONALS FRONT CONTINUED EXPATRIATE CONTROL OF AFFECTED FIRMS. COMMENT: ALTHOUGH THE POLICE POWERS OF THE NEPB HAVE BEEN UNDOUBTEDLY STRENGTHENED, ITS INFLUENCE WITHIN THE BUREAUCRACY IS LIKELY TO REMAIN WEAK. IT STILL DOES NOT HAVE A SEPARATE AND INDEPENDENT SEAT ON THE INFLUENTIAL FEDERAL EXECUTIVE COUNCIL BUT MUST SERVE OFTEN CONFLICTING INTERESTS OF AFOREMENTIONED MINISTRIES REPRESENTED ON NEPB'S BOARD. ADMINISTRATIVELY NEPB WILL CONTINUE TO BE UNDER MINISTRY OF INDUSTRIES.

B) CAPITAL ISSUES COMMISSION.

CIC WILL CONTINUE TO DETERMINE PRICE OF SHARES TO BE SOLD OR TRANSFERRED. THEY WILL ALSO DECIDE TIME AND CONDITIONS OF SALE, INCLUDING OVERSEEING SELECTION OF BUYERS AND ALLOTMENT OF SHARES AMONG BUYERS. NO INDIVIDUAL WILL BE ABLE TO HOLD MORE THAN 5 PERCENT OF 50,000 NAIRA (WHICHEVER IS HIGHER) EQUITY IN ANY ONE ENTERPRISE. AT LEAST 10 PERCENT OF SHARES TO BE SOLD OR TRANSFERRED IN SCHEDULE II OR III ENTERPRISE WILL BE RESERVED FOR EMPLOYEES OF THE ENTERPRISE OF WHICH HALF WILL BE RESERVED FOR NON-MANAGERIAL STAFF. COMMENT: LOOPHOLES IN EQUITY HOLDING RESTRICTION ARE OBVIOUS, E.G., BREAKING DOWN A COMPANY INTO A NUMBER OF FIRMS AND SPLITTING EQUITY HOLDINGS AMONG VARIOUS MEMBERS OF A FAMILY. ALSO, SINCE ONLY SCHEDULE II AND SCHEDULE III FIRMS WILL BE AFFECTED, ONLY 5 PERCENT (THAT PART OF THE STOCK SALE RESERVED FOR NON-MANAGEMENT NIGERINAS) OF A MAXIMUM 60 LIMITED OFFICIAL USE

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OR 40 PERCENT STOCK SALE, I.E., 3 OR 2 PERCENT, IS LIABLE TO FILTER DOWN TO MIDDLE CLASS PERSONNEL. THUS NO APPRECIABLE WEALTH LEVELING AFFECT OF THIS MEASURE IS FORESEEN.

3. EFFECT OF DECREE ON U.S. FIRMS ALREADY IN NIGERIA.

DECREE SCHEDULES (REF A) LISTED ARE GENERALLY ALONG LINES OF EMBASSY ESTIMATE PER PARA 3 A REF B. ALL U.S. FIRMS AFFECTED. BANKING AND INSURANCE ARE UNDER SCHEDULE II AS ARE COSMETIC FIRMS. LISTING OF ALL CONSTRUCTION FIRMS UNDER SCHEDULE II SOMETHING OF A SURPRISE. PARA 5 REF C REPORTED POSSIBILITY OF MAJOR CONSTRUCTION FIRMS FALLING UNDER SCHEDULE III. PHARMACEUTICALS, TELECOMMUNICATIONS, AND OFFICE EQUIPMENT, AND MOST MANUFACTURING WILL BE UNDER SCHEDULE III. CHARTERED ACCOUNTANT FIRMS AND CONSULTING ENGINEERS NOT MENTIONED. ALTHOUGH SUCH NON-LISTING MAY PUT THEM UNDER SCHEDULE III BY DEFINITION, IT ALSO GIVES CREDENCE TO RUMOR THAT FMG IS CONSIDERING A SEPARATE DECREE COVERING THE PROFESSIONS. POSITIONS OF FIRMS ENGAGED IN CROSS SCHEDULE OPERATIONS (E.G, PFIZER, WITH LIVESTOCK FEED, COSMETICS AND PHARMACEUTICALS) NOT YET CLEAR. FOLLOWING LETTER OF

DECREE, MULTI-OPERATIONAL COMPANIES WOULD HAVE TO BREAK UP ON FUNCTIONAL/SCHEDULE LINES, AND THEN DIVEST EQUITY ACCORDINGLY. HOWEVER, TALKS WITH FMG OFFICIALS PRIOR TO DECREE'S PUBLICATION INDICATED THAT FMG APPRECIATED COMPANIES WANTING TO KEEP MULTI-OPERATIONAL ENTERPRISES INTACT AND WAS WILLING TO NEGOTIATE ON THIS BASIS. MOST FIRMS TO NOT YET HAVE TEXT OF DECREE. ALSO, FMG OFFICIALS STILL ABSORBING IMPACT OF DECREE AND NOT YET READY TO COMMENT. WILL CABLE REACTIONS/CLARIFICATIONS ONCE DUST SETTLES.

4. QUASI EXEMPTIONS TO DECREE.

DECREE PROVIDED TWO QUASI EXEMPTIONS TO OTHERWISE UNIVERSAL ADHERENCE TO THE THREE SCHEDULES. BOTH AFFECT HOLDING COMPANIES (LARGELY BRITISH). EXPATRIATE CONTROL OF HOLDING COMPANIES MAY CONTINUE IF OPERATIONS LISTED UNDER AT LEAST TWO SCHEDULES; COMPANY HAS A TOTAL ANNUAL TURNOVER OF AT LEAST NAIRA 25,000,000; CONDUCTS BUSINESS IN AT LEAST 11 OF THE 16 STATES; AND HAS A NIGERIAN EQUITY PARTICIPATION OF AT LEAST 60 PERCENT IN THE HOLDING COMPANY BY LIMITED OFFICIAL USE

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JUNE 30, 1977. ALSO NON-TRADING HOLDING COMPANIES ARE NOT AFFECTED BY SCHEDULE PROVISIONS IF THEIR SUBSIDIARY COMPANIES COMPLY WITH DECREE.

5. WILL POUCH COPIES DECREE TEXT TO ADDRESSEES.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PRIVATE ENTERPRISE, NATIONALIZATION, ECONOMIC PROGRAMS, COMMERCIAL LAW
Control Number: n/a
Copy: SINGLE
Sent Date: 20-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977LAGOS00646
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770021-0539
Format: TEL
From: LAGOS
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770133/aaaabczu.tel
Line Count: 145
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 75ee07d4-c288-dd11-92da-001cc4696bcc
Office: ACTION AF
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 LAGOS 541, 77 LAGOS 13175, 77 LAGOS 13720
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 03-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3549724
Secure: OPEN
Status: NATIVE
Subject: 1977 INDIGENIZATION DECREE
TAGS: EINV, PGOV, NI
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/75ee07d4-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009